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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

D.R., a Minor, et al.

Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT, et al.,

Real Parties in Interest.

A149245

(Contra Costa County
Super. Ct. MSC 16-01447)

Petitioner D.R. (petitioner) challenges the superior court's order striking his peremptory challenge to Judge Judith S. Craddick as untimely. We conclude the superior court erred by using an incorrect date to calculate when the time began to run for petitioner to bring a peremptory challenge. We therefore order the superior court to vacate its earlier order denying the challenge as untimely and to issue a new order granting the challenge and reassigning the case.

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2016, petitioner, a disabled minor, by and through his guardian, filed a complaint against West Contra Costa Unified School District for damages stemming from his allegedly having been sexually assaulted over a period of months at a school site. The superior court's docket shows that on the date the complaint was filed, a case

management conference was set for December 12, 2016, in Department 9, the Honorable Judith S. Craddick. A later entry from the same date states: “Case has been assigned to Dept. 17 [the Honorable Barry P. Goode].” The superior court issued—and petitioner received—a notice stating in pertinent part: “This matter has been assigned to Department 17, Judge B. Goode presiding, for all purposes.” The notice instructed counsel “to appear in Dept. 17 on 09/30/16 at 8:30 a.m.”

On August 1, 2016, the superior court mailed a document entitled “Notice of Continuance” to petitioner, stating in part: “Case management conference has been continued from: 09-30-16, Dept 17 and is hereby continued to: date: 12/12/16 time: 9:00 dept: 09.” Also on August 1, 2016, an entry was made in the superior court docket stating: “default department changed to 09.” Petitioner understood this “Notice of Continuance” to also be a notice of reassignment from Department 17 to Department 9.

On August 12, 2016, petitioner filed a peremptory challenge to Judge Craddick under Code of Civil Procedure, section 170.6.¹ On August 18, 2016, petitioner filed an amended peremptory challenge, correcting an erroneous party reference from defendant to plaintiff, and providing the name of the judge he was challenging by changing the words “Honorable Judge” to “Honorable Judge, Judith S. Craddick.” Judge Craddick denied the challenge as untimely, and her order was served on petitioner by mail on August 19, 2016. A handwritten notation on a form discussing specific deadlines for challenging judges states, “This case was assigned on 7-25-16.”

On September 6, 2016, petitioner filed a petition for writ of mandate in this court challenging the denial of the peremptory challenge. On September 9, 2016, we issued notice, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180

¹All statutory references are to the Code of Civil Procedure.

(*Palma*) that, if appropriate, we may issue a peremptory writ in the first instance.² We requested informal briefing.

For unexplained reasons, Judge Craddick did not learn of our request for briefing until the deputy clerk of this court called to inquire why no response had been filed by the deadline. Thereafter, the superior court immediately filed its opposition on September 20, 2016.

DISCUSSION

Section 170.6, subd. (a)(2), requires that a peremptory challenge be brought within 15 days after notice of an all-purpose assignment. (§ 170.6, subd. (a)(2).) Where, as here, the notice is served by mail, the deadline is extended an additional five days. (§ 1013, subd. (a).) If the disqualification motion is timely and supported by an adequate declaration, the judge who is being challenged may not preside over the case. (§ 170.6, subd. (a)(1); *Hemingway v. Superior Court* (2004) 122 Cal.App.4th 1148, 1157 [if disqualification motion is proper, the disqualification is instantaneous and “requires the court to transfer the cause immediately for reassignment”].) The order may only be reviewed by writ petition. (§ 170.3, subd. (d).) Where the timeliness of a peremptory challenge is at issue and does not involve disputed evidence, the superior court need not hold an evidentiary hearing. (*Shipp v. Superior Court* (1992) 5 Cal.App.4th 147, 151, disapproved on other grounds by *People v. Superior Court* (1993) 4 Cal.4th 1164, 1171.)

Petitioner contends his August 12, 2016 challenge and August 18, 2016 amended challenge were timely filed because the only two notices regarding assignment he received were: (1) the initial notice of assignment to Department 17; and (2) the August 1, 2016 notice of reassignment to Department 9. The superior court argues that petitioner nevertheless should have known on July 25, 2016, that the case had been assigned to Judge Craddick because the file-endorsed copy of the complaint has a stamp

²Expediting a decision pursuant to *Palma, supra*, 36 Cal.3d 171, is appropriate “when petitioner’s entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue.” (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236–1237, 1240–1241.)

on it that states: “Per local Rule 5 this case is assignment to Dept. 9.” According to the superior court, because petitioner had notice of the assignment to Judge Craddick on July 25, 2016, he had until August 15, 2016 to file his challenge, and the amended challenge filed August 18, 2016, was therefore untimely.³

We conclude that notice of the assignment to Judge Craddick was first effected by mail, on August 1, 2016, when the superior court informed petitioner that the case management conference was being moved from Department 17 to Department 9. There is nothing in the record indicating that the stamped complaint showing the initial assignment to Department 9 was served on petitioner. In his reply brief, petitioner denies he was ever given a copy, and in fact, the file endorsed copy of the complaint that appears to have been given to petitioner has a stamp on the first page that states: “Per Local Rule 5 this case is assigned to Dept 17.”

Moreover, even assuming petitioner received a copy of the stamped complaint showing the assignment to Department 9, we note the superior court thereafter issued a notice to petitioner stating, “This matter has been assigned to Department 17, Judge B. Goode presiding, for all purposes [¶] . . . All counsel are required to appear in Dept. 17 on 09/30/16 at 8:30 a.m.” Petitioner was therefore justified in relying on the explicit statement by the superior court that the matter was being assigned to Department 17, and had no reason to challenge Judge Craddick at that time. (See e.g., *In re Robert G.* (1982) 31 Cal.3d 437, 440 [due process requires that an accused be advised of the charges he faces so that he has a reasonable opportunity to defend himself], citing *People v. West* (1970) 3 Cal.3d 595, 612.) Because petitioner did not receive notice of the assignment to Judge Craddick until August 1, 2016, his peremptory challenge filed August 18, 2016 was timely.

³The superior court’s argument is based on the assumption that the peremptory challenge was not perfected until petitioner filed the *amended challenge* on August 18, 2016. The parties do not address whether the initial challenge filed August 12, 2016—which omitted Judge Craddick’s name—was valid. We need not—and therefore will not—address whether the initial challenge filed August 12, 2016 was valid.

DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its August 19, 2016 denial of petitioner's peremptory challenge as untimely and to issue a new order granting the challenge and transferring the case immediately to another judge.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.

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